

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

in the Matter of the Appeal of)
LUGONIA PARK WATER COMPANY)

Appearances:

For Appellant: Thomas McPeters
Attorney at Law

For Respondent: Carl G. Knopke
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lugonia Park Water Company against a proposed assessment of franchise tax in the amount of \$7,884.77 for the income year 1976.

Appeal of Lugonia Park Water Company

This is a companion case to the Appeals of Crafton Water Company, et al., decided this same day. The underlying issue here is the same as that presented in the Crafton case; because of the identity of those issues and of the facts and legal principles involved, we incorporate by reference our opinion in that case, and we accordingly hold that respondent's determination, except to the extent that it is inconsistent with the stipulation executed involving the adjustment to appellant's basis in the stock transferred, is proper.

Appellant was originally a party to the Appeals of Crafton Water Company, et al. However, respondent discovered that it had issued a proposed assessment for the wrong year. Accordingly, respondent withdrew the proposed assessment issued for the income year 1977, and instead, on August 17, 1981, issued the present proposed assessment for the same amount, but for the correct income year 1976.

Appellants filed a protest on September 22, 1981, however, incorporating the additional argument that pursuant to Revenue and Taxation Code section 25663a, the **four-year** statute of limitations period for the return deemed filed on March 17, 1977, had expired by August 17, 1981, thereby precluding respondent from issuing the second proposed assessment.

Respondent answers appellant by noting that since the omission of the income (i.e., \$89,219.20) reflected in the proposed assessment at issue here is more than 25 percent of the gross income stated in the return (i.e., \$2,675.37), the six-year statute of limitations period of Revenue and Taxation Code section 25663c applies to validate its second proposed assessment dated August 17, 1981; for the return deemed filed on March 17, 1977.

Clearly, statutory authority and the record support respondent; accordingly, we sustain the propriety of **its action** in issuing the second proposed assessment on August 17, 1981. Therefore, we hold that respondent's determination must be sustained.

Appeal of Lugonia Park Water Company.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Lugonia Park Water Company against a proposed assessment of franchise tax in the amount of **\$7,884.77** for the income year 1976, be and the same is hereby modified in accordance with the views expressed in this opinion. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 26th day of **October**, 1983, by the State Board of Equalization, with Board Members Mr. Bennett; Mr. **Collis**, Mr. **Dronenburg**, Mr. Nevins and Mr. Harvey present:

William M. Bennett _ _ _ , Chairman
Conway H. Collis _____, Member
Ernest J. Dronenburg, Jr. _ , Member
Richard Nevins _____, Member
Walter Harvey* _____, Member

*For Kenneth Cory, per **Government Code** section.7.9